DATE: March 14, 2002

In Re:

SSN: ----------

Applicant for Security Clearance

CR Case No. 01-07082

DECISION OF ADMINISTRATIVE JUDGE

PAUL J. MASON

APPEARANCES

FOR GOVERNMENT

Michael H. Leonard, Esq., Department Counsel

FOR APPLICANT

Pro se

SYNOPSIS

The foreign preference (Guideline C) allegations stem from Applicant's exercise of dual citizenship with Italy (FC 1) and the United States (US), possession/use of a FC 1 passport, and the one year FC 1 military service. The foreign influence (Guideline B) allegations arise because Applicant's wife is a dual citizen, his stepfather is a resident of FC 1, his mother, parents-in-law, uncles, aunts, and 15 cousins are citizens of and residents of FC 1. The foreign preference concerns are removed because Applicant's military service and possession and use of his foreign passport occurred before he obtained his US citizenship in March 1994. Appellant's nominally passive statements concerning dual citizenship do not translate to a preference for FC 1 because the maintenance, as opposed to the exercise of dual citizenship, is not security disqualifying. The foreign influence concerns are eliminated because the immediate family members are not agents of a foreign power or in a position to be exploited in a way that could force Applicant to choose between loyalty to the person(s) involved and the US. Also the contact with the foreign citizens is casual and infrequent. Clearance is granted.

STATEMENT OF CASE

On September 19, 2001, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, amended by Change 3, February 13, 1996, and Change 4, April 20, 1999, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether clearance should be denied or revoked. Applicant submitted his response to the SOR on October 10, 2001. Applicant requested a hearing.

The case was transferred to the undersigned on October 30, 2001. A notice of hearing was issued on November 8, 2001, and the case was heard on November 26, 2001. The Government and Applicant submitted documentary evidence. Testimony was taken from Applicant and two witnesses. The transcript (Tr.) was received on December 6, 2001.

FINDINGS OF FACT

The SOR alleges foreign preference (Guideline C) and foreign influence (Guideline B). In his October 2001 answer to the SOR, Applicant admitted subparagraph 1.a. and denied subparagraph 1.b. However, at hearing, Applicant changed his answer to subparagraph 1.a., explaining that since the investigation began into his security clearance application, he has learned it is very important to understand and utilize the most appropriate terms when explaining his positions regarding foreign influence and foreign preference. Applicant stated:

Okay. Again, at the time I did my very first paperwork for the government as I said in my opening and also when I wrote this letter here, I did not pay enough attention to the minutiae involved in splitting hairs and using words, the fine meaning of words. As we went through the process, I realize that it's very important that I accurately choose and read the terminology. So, I have some corrections based upon that, okay. (Tr. 34)

However, in response to the foreign influence allegations, Applicant left his answers unchanged. He admitted subparagraphs 2.a., 2.c., and 2.c. He denied subparagraphs 2.b. and 2.e. Applicant is 35 years old and was hired by his current employer as a software engineer in March 1994. He seeks a secret level clearance.

Applicant was born out of wedlock in Italy (FC 1) on December 11, 1966. His birth father, a United States (US) citizen, was employed by the US Navy. His mother is a citizen of FC 1. Applicant's birth father abandoned him after his mother became pregnant with Applicant. His mother married Applicant's stepfather, also a US citizen, who was also in the US Navy, and employed as a Chief Petty Officer.[(1)] Applicant's dual citizenship under these circumstances started at birth. Applicant lived at mostly FC 1 military bases the majority of his childhood and teenage years, and attended US Department of Defense Dependent Schools during those years. (GE 2)

Approximately four months after his eighteenth birthday in 1985, Applicant applied for US citizenship because he wanted to further his education. (GE 2) Applicant's application for citizenship was denied because it was made after Applicant's eighteenth birthday, which triggered a five year residency requirement. (Tr. 25-27; AE 3)

Following the denial of his application for US citizenship in 1985, Applicant found himself with neither a FC 1 passport or a US passport. (Tr. 26) Because Applicant was an FC 1 citizen, he was required to serve one year in the FC 1 military.[(2)] He completed the one FC 1 military duty in April 1987. The military service was a requirement for all FC 1 citizens over the age of 18. (GE 2; Tr. 26)

After his one year FC 1 military service, Applicant, using his FC 1 passport,[(3)] emigrated to the US on August 10, 1987, where he began college at an aeronautical university. After graduation, Applicant began working while waiting for the five year residency requirement to expire so he could apply for his US citizenship. He received his US citizenship in March 1994.

Applicant's spouse was born in FC 1 on September 18, 1965. (AE 5) She became a US citizen in March 2000. She is a dual citizen of FC 1 and the US. (2.a.) She married Applicant in FC 1 and moved to the US with him. Applicant's first child was born in 1992, and his second in 1995. Both children were born in the US. Applicant's wife has not used her FC 1 passport since becoming a US citizen in March 2000. (Tr. 41)

When asked about his dual citizenship on October 31, 2000 (GE 2), Applicant stated:

I consider myself a dual citizen because I am an FC 1-American. I would like to maintain my dual citizenship with FC 1 for the purpose of family visitation, and to give my children the opportunity to claim dual nationality if they choose. My family heritage is FC 1. My personal choice is dual citizenship. I have an FC 1 passport that is currently expired. The passport was obtained before my U.S. citizenship was obtained. My passport was issued by FC 1. I obtained the passport for travel. I was unable to obtain a US passport until becoming a U.S. citizen. The passport was used for travel between the U.S. and FC 1 prior to using my U.S. passport. I last used my FC 1 passport about 8 years ago (prior to its expiration). I have not used my FC 1 passport since gaining my U.S. passport. I would consider renouncing my FC 1 citizenship if requested to do so. My FC 1 passport is not valid. I have no current plans to renew my FC 1 passport. I keep it as a souvenir. I have fulfilled my obligation to the FC 1 military as described above. I have not performed any

type of service to the FC 1 government since my military obligation. At present, I have no rights or privileges offered by FC 1 to its citizens. My travel to FC 1 is strictly to visit my family and relatives. My travel to FC 1 is not to fulfill citizenship requirements. I do not maintain my dual-citizenship with FC 1 to protect financial interests or investments in FC 1. My dual-citizenship is not for registration for military service or with a foreign office, embassy, or consulate. I do not claim dual-citizenship for the purpose of voting in FC 1 elections or seeking political office in FC 1. I have never used a U.S. government position or trust or responsibility to influence decisions in order to serve the interests of another government in preference to those of the U.S. My loyalty to the U.S. government is 100%. I have feeling only towards my relatives in FC 1. I have no sympathy or feeling toward the government of FC 1.

When Applicant answered the SOR in October 2001, his mother was a citizen and resident of FC 1, and his stepfather was a resident of FC 1. (2.b.) After Applicant answered the SOR in October 2001, his mother and stepfather were contemplating a return to the US. At the time of the hearing, they were located in a middle western state in the US, attending a funeral. (Tr. 65-67) Both parents are retired. (GE 2)

Applicant's mother-in-law and father-in-law are citizens and residents of FC 1. (2.c.) Applicant visits them every two years. His wife also contacts them regularly on holidays by phone. (Tr. 67)

Applicant has three aunts, two uncles, and 15 cousins who are citizens and residents of FC 1. (2.d.) Though one of his uncles is a chauffeur for an FC 1 judge, none of his relatives work for or are connected with the FC 1 Government. Applicant does not always see all his aunts, uncles and cousins on a regular basis when he travels to FC 1. (Tr. 45-46, 67) Applicant has vacationed in FC 1 approximately every two years since he came to the US to go to school.

Applicant identified certain portions of GE 2 he disputed and explained why. In the last two lines of GE 2, p. 2, Applicant detailed his concerns about the words "bound by affection" used the sentence. During the interview when Applicant and the Agent were trying to describe Applicant's relationship with his family in FC 1, the Agent suggested the words "bound by affection," adopted by Applicant in the sworn statement, although on reflection, Applicant would not use the same words. (Tr. 41) Although he loves his family as anyone similarly situated, he is not easily influenced by any member of his family, even his wife. (Tr. 42) An example of the lack of influence his family has had on him occurred when he decided to choose the Protestant religion in a family of Catholics.[(4)]

In explaining his lack of ties with FC 1 and his current intention to renounce FC 1 citizenship, Applicant recognized his present position was different from the conditional renunciation he expressed in his sworn statement in October 2000. He stated:

Okay, first of all, I want to say I have no foreign employment. I have never worked for a foreign government. I have no foreign property. I have no bank accounts. I am not registered with any foreign political party. I never voted in any foreign election. So, basically, there it says, well, first, I want to say I unequivocally right now at this moment, I am willing to renounce my FC 1 citizenship and give up my FC 1 passport. (Tr. 34, 35)

To demonstrate how much he has embraced the American culture and way of life, Applicant stated:

I did choose to become an American citizen. I did choose to register to vote from my first day of citizenship and I have voted ever since. I did choose to buy two homes here in the U.S. where I intend to raise my children. I did choose to seek employment here in the U.S. when I could have easily obtained work in FC 1. I have bank accounts, retirement accounts, friends and family right here in [the city limits]. I could have attended FC 1 university for free but I choose to return to America and go into great debt to obtain my education." (Tr. 35, 36)

Although Applicant articulated some reservations about relinquishing his FC 1 citizenship without an official explanation (GE 2), Applicant has firmly changed his mind and is ready to give up his foreign citizenship. He stated:

Okay, Yes, I am, absolutely, like I said I am willing to give it up. And I'm ready to go to bat. I 'm not just saying, yes, I'll give it up so that maybe you don't make me do it and I keep it. I'm honestly ready to do that. Now, what has changed since the time that I said I, you know, I was hesitant and today, I think what has changed for the most part is that I have given it a lot more thought in terms of, I hadn't , all the evidence that I presented today, I didn't have in my mind. I started digging things out. I started looking at my passport. I started looking, okay, when did I do this, when did, hey,

you know what? I've never voted. I never even registered. When I looked at all those things, I said, you know what? I have no use for this. I never actually used it. So, the thing that has changed and has put me over the edge is that, you know, truthfully, there is no reason for me to have this." (Tr. 63-64)

Applicant's neighbor, who has also been Applicant's coworker for the past four years, has developed a close friendship with Applicant. Applicant's second friend has known Applicant for three years and has watched Applicant's children grow up in the church they both attend.[(5)] According to his second friend, Applicant is willing to work with others closely to get projects done. (Tr. 79)

In May 1997, Applicant was recognized for his outstanding performance and dedication on the job. (AE 3) Applicant demonstrated a solid performance for the period from May 2000 to May 2001. (AE 3)

POLICIES

Enclosure 2 of the Directive sets forth policy factors which must be given consideration in making security clearance determinations. These factors must be considered in every case according to the pertinent criterion; however, the factors are in no way automatically determinative of the decision in any case nor can they supersede the Administrative Judge's reliance on his own common sense. Because each security case presents its own unique facts and circumstances, it should not be assumed that the factors exhaust the entire realm of human experience or that the factors apply equally in every case. In addition, the Judge, as the trier of fact, must make critical judgments as to the credibility of witnesses. Factors most pertinent to evaluation of the facts in this case are:

Foreign Preference

Disqualifying Conditions (DC):

1. The exercise of dual citizenship;

2. Possession and/or use of a foreign passport.

3. Military service or a willingness to bear arms for a foreign country.

Mitigating Conditions (MC):

1. Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

2. Indicators of possible foreign preference occurred before obtaining US citizenship;

4. Individual has expressed a willingness to renounce dual citizenship.

Foreign Influence

Disqualifying Conditions (DC):

1. An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country;

2. Sharing living quarters with a person or persons, regardless of their citizenship status, it the potential for adverse foreign influence or or duress exists;

Mitigating Conditions (MC):

1. A determination that the immediate family member(s).(spouse, mother, sons daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States;

3. Contact and correspondence with foreign citizens are casual and infrequent.

General Policy Factors (Whole Person Concept)

Every security clearance case must also be evaluated under additional policy factors that make up the whole person concept. Those factors (found at page 2-1 of Enclosure 2 of the Directive) include: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the voluntariness of participation; (6) the presence or absence of rehabilitation and other behavioral changes; (7) the motivation for the conduct; and, (8) the likelihood of continuation or recurrence.

Burden of Proof

As set forth in the Directive, every personnel security determination must be a fair and impartial overall commonsense decision based upon all available information, both favorable and unfavorable, and must be arrived at by applying the standard that the granting (or continuance) of a security clearance under this Directive may only be done upon a finding that to do so is clearly consistent with the national interest. In reaching determinations under the Directive, careful consideration must be directed to the actual as well as the potential risk involved that an applicant may fail to properly safeguard classified information in the future. The Administrative Judge can only draw those inferences or conclusions that have a reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature.

The Government must establish all the factual allegations under foreign preference (Guideline C) and foreign influence (Guideline B) which establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between an applicant's adverse conduct and her ability to effectively safeguard classified information, with respect to the sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation which demonstrates that the past adverse conduct is unlikely to repeat itself and Applicant presently qualifies for a security clearance.

CONCLUSIONS

Foreign preference concerns emerge when an individual acts in a manner indicating his preference of a foreign country over the US. Applicant was born in FC 1 to an FC 1 mother and a US father. Although Applicant attained dual citizenship status at birth, Applicant did not officially seek citizenship until approximately four months after his 18th birthday. He was informed of a five year five residency requirement before he could apply for US citizenship. Therefore, having only FC 1 citizenship, Applicant was obligated to serve in the FC 1 military, which he completed in 1987.

Then, Applicant permanently relocated in the US in 1987 (using an FC 1 passport that expired in 1992), and enrolled in aviation school. He successfully completed school and applied for US citizenship. He officially became a dual citizen when he received his US citizenship in March 1994. Applicant's exercise of dual citizenship (DC 1), his possession and/or use of a foreign passport (DC 2), and his military service (DC 3) raise initial security concerns as to whether Applicant will always keep US interests paramount or act in a manner that indicates a preference for FC 1 over the US.

Regarding DC 1 of the foreign preference guideline, in October 2001 (GE 2), Applicant stated he wanted to maintain his dual citizenship for the purpose of family visitation and to provide his children an opportunity to claim dual citizenship. Although Applicant's statements raise suspicion about whether Applicant prefers FC 1 over the US, the passive maintenance of dual citizenship is not disqualifying. Applicant's attitude about his FC 1 heritage does not evince a preference for FC 1 and against the US because Applicant has convincingly demonstrated by his actions his preference is for the US. Even before he became a naturalized US citizen in March 1994, Applicant rejected the low cost or no cost educational opportunities in FC 1 for expensive scholastic opportunities in the US. Applicant has never voted in an FC 1 election nor has he ever held a position in an FC 1 political party. He has never held a position in the FC 1 Government.

Applicant's ties to the US are supported by his ownership of two homes, his voting in every election since naturalization in 1994, and his employment by the same defense contractor since 1994.

DC 2 under the foreign preference guideline refers to possession of a foreign passport. However, Applicant's foreign passport was not valid (the FC 1 passport expired in 1992) when he received his US citizenship in March 1994. Second, Applicant has only traveled on his US passport since March 1995.

Applicant's one year compulsory military service in FC 1 between 1986 and 1987 raises potential security concerns under DC 3 of the preference guideline.

Mitigating conditions (MC) 1, 2, and 4 under the foreign preference guideline have potential applicability if the dual citizenship is based solely on parents' citizenship or birth in a foreign country (MC 1), indicators of possible foreign preference occurred before obtaining US citizenship (MC 2), and the individual has expressed a willingness to renounce dual citizenship (MC 4). MC 1 applies initially to the facts because Applicant became a dual citizen at birth through his parents actions and no conduct of his own. However, the probative act which raises the specter of foreign preference while removing MC 1 from consideration is Applicant's receipt of an FC 1 passport in 1987 and Applicant's statements about dual citizenship in October 2000. On the other hand, Applicant only used the FC 1 passport to emigrate to the US and during the residency period awaiting his US passport. Applicant's statements in October 2000 about dual citizenship are not disqualifying as residual feelings of affection about his heritage and indirectly, his country of origin, which shares the same kind of democratic government having respect for human rights and the rule of law.

Applicant's possession and use of the FC 1 passport in 1987 occurred before he obtained his US citizenship in March 1994.[(6)] Applicant's compulsory service in the FC 1 military in 1986 and 1987 raises no no present security concerns because it occurred seven years before he received his US citizenship in March 1994. (MC 2)

MC 4 of the foreign preference guideline should be considered when the Applicant has expressed a willingness to renounce dual citizenship. While Applicant's willingness to renounce was somewhat conditional in October 2000, Applicant's testimony at the hearing persuades me Applicant will consistently hold as paramount his preference to the US, as he has done since receiving his citizenship in March 1994.

Guideline B arises as a security concern when an individual's immediate family, including cohabitants, and other persons to whom her or she may be bound by affection, influence, or obligation are not citizens of the US or may be subject to duress. Applicant resides with his spouse a dual citizen, and two children. His mother is a citizen of FC 1 and his stepfather is a resident of FC 1. In addition, Applicant's mother-in-law and father-in-law are citizens and residents of FC 1. Finally, Applicant has three aunts, two uncles, and 15 cousins who are citizens of and residents of FC 1. DC 1 (an immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country) must be considered in assessing the potential for foreign influence, coercion, exploitation, or pressure. Because Applicant shares his living quarters with his spouse, a dual citizen, whose parents live in FC 1, the potential for adverse influence brings DC 2 (sharing living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists) into consideration.

The potential for foreign influence because of Applicant's significant feelings of affection for his immediate family members may be successfully challenged if the immediate family member(s) are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to the person involved and the US (MC 1). The only connection any of his family has with the FC 1 Government is through the job Applicant's uncle has as chauffeur for an FC 1 judge. Applicant's mother and stepfather are retired and are in the process of returning to the US. Applicant's visit with his in-laws every two years demonstrates a strong familial relationship Applicant has continued to have with his in-laws over the years. However, a commonsense review of all the evidence fails to infer or suggest the strong relationships are actually cultivating the potential for any of the relatives or in-laws to force Applicant into a position where he must choose between loyalty to the persons involved and the US.

Having weighed and balanced the circumstances of this case against the disqualifying and mitigating conditions of the foreign preference and foreign influence guidelines, this case shall also by analyzed under the general factors of the whole person concept. The foreign preference concerns are persuasively eradicated because they occurred before

Applicant's receipt of US citizenship in March 1994. A commonsense review of the evidence under foreign influence does not show the potential for influence that could result in Applicant being placed in a position where he would have to choose between loyalty to the person(s) involved and the US.

FORMAL FINDINGS

Formal Findings required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1 (Foreign Preference): FOR THE APPLICANT.

a. For the Applicant.

b. For the Applicant.

Paragraph 2 (Foreign Influence): FOR THE APPLICANT.

a. For the Applicant.

b. For the Applicant.

c. For the Applicant.

d. For the Applicant.

e. For the Applicant.

DECISION

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant a security clearance for Applicant.

Paul J. Mason

Administrative Judge

1. The two married at a newly constructed military base in FC 1. (Tr. 21-22)

2. During this one year tour of duty in FC 1, Applicant recalled working in the same location with his stepfather. (Tr. 27)

3. The FC 1 passport expired on September 4, 1992 and has not been renewed. Applicant last used his FC 1 passport in approximately 1992. (GE 2)

4. Applicant's American grandmother has had the most amount of influence on him. She prayed for Applicant when he was four and provided him his first Bible when he was eleven. (Tr. 43-44)

5. In November 1987, Applicant was officially recognized for his important contributions to the ministry. (GE 5)

6. MC 2 refers to indicators of possible foreign preference occurred before obtaining US citizenship.